



EMPLOYMENT TRIBUNALS

Claimant: Miss C Forshaw

Respondent: Potter Trading Limited (In Voluntary Liquidation)

HELD AT: Liverpool

ON: 6 December 2017

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: In person

Respondent: No attendance or representation

JUDGMENT

It is the judgment of the Tribunal that:

1. The name of the respondent be amended to Potter Trading Limited (In Voluntary Liquidation).
2. The respondent unlawfully withheld and deducted from the claimant's wages the sum of £76.46 in respect of the balance of pay in lieu of untaken holiday at the termination of her employment.
3. The respondent wrongfully dismissed the claimant and she is entitled to notice pay in respect of one week's notice in the gross sum of £365.50.
4. The respondent is ordered to pay the said sums of **£76.46** and **£365. 50** to the claimant. These awards are gross and should therefore be paid with the appropriate deductions, if any, for tax and national insurance.

REASONS

1. The Tribunal this morning has convened to hear the claims by Ms Forshaw against her former employer, arising out of the termination of her employment on 24 May 2017. The claimant had been employed by the respondent since 1 August 2016 at the Ring O'Bells public house. There was no written contract of employment, no written statement of terms of employment, and in fact nothing at all in relation to the formalities of her employment.

2. The respondent has responded to these claims relatively briefly, and in the response the respondent is described as Martin Potter t/a Potter Trading. The claimant, when she brought the claim, named the respondent as Martin Potter t/a Potter Trading Limited, and an issue has arisen as to the identity of the respondent, and in particular whether the respondent is a limited company or whether it is Mr Potter personally. That is particularly potentially important, because the limited company has since gone into liquidation, and consequently responsibility for these claims may ultimately lie with the Secretary of State, or with Mr Potter personally. Consequently, at the outset of the hearing the Employment Judge raised with the claimant the identity of the respondent, and whether it was her view that the correct respondent was the limited company, or properly Mr Potter personally.

3. In terms of formalities, as I have indicated there were very few in relation to this employment, but upon termination there was communication with Mr Potter about the circumstances of the termination, and belatedly, and retrospectively he produced to the claimant a set of payslips, none having been provided during her employment, but those payslips are in the name of Potter Trading Limited. Furthermore, the claimant was paid by bank transfer, and she has checked her bank details today. Indeed the reference on those payments that were made while she was employed do show "Potter Trading Limited".

4. In terms of that company, it was incorporated in January 2016. The only accounts filed for it Companies House are up until 30 June 2016, when it is shown as a dormant company. It may be thought, of course, that a dormant company cannot have any employees, and indeed if that was still the case that company could not have been the employer of the claimant. Those accounts, however, are only made up to 30 June 2016, and Miss Forshaw has told me this morning how in fact the respondent, in effect Mr Potter, did not actually start trading in the public house until July 2016. Her employment, of course, started on 1 August 2016. Consequently it would not be during the period of the dormant accounting period that the employment would have started, and indeed the fact that the company was dormant would be explicable by the fact that Mr Potter had not at that point yet gone into the public house. So consequently the circumstances did exist for the limited company to be the claimant's employer, and the indications, it seems to me, are that that company was indeed the employer, and that the proper respondent is Potter Trading Limited.

5. That respondent is, however, in voluntary liquidation having in fact gone into liquidation as recently as 15 November 2017, and indeed the claimant has received a letter of notification from accountants acting in the liquidation addressed to "all employees". She has been provided with a fact sheet for making claims against the Insolvency Service and the Redundancy Payments Office. The indications, of course, there are that the company is accepting that any liability is upon the company, and not Mr Potter personally.

6. Against that it can be said that when writing to the claimant on 24 May 2017 dismissing her, Mr Potter made no reference to the company, and indeed in none of his correspondence has he made any reference to the company. One also could view with some suspicion the fact that payslips have been provided after the event with the limited company's name on them. A further intriguing factor is that Mr Potter has in the meantime incorporated another company called Jakamar Limited which

was incorporated in October 2017 and apparently is continuing to trade at the Ring O'Bells. That is not a matter that has any direct bearing upon the claimant's claims, of course, as she was dismissed earlier in the year, but this appears to be a company that is trading in respect of a business which was carried on at premises previously occupied by a business run by a company which is now in liquidation.

7. Be all that as it may, the Tribunal can only deal with the claimant's claims against the correct respondent, Miss Forshaw has accepted today that the correct respondent should indeed be the limited company, and that is the view I have come to.

8. In terms of the claims that are made, they are twofold. One is relatively straightforward, in the sense that it is an absolute entitlement, and that is to pay in lieu of untaken holiday upon termination of employment. The respondent did make a payment in this regard, but that payment was short, because it was calculated at the wrong rate. The claimant in her claim form, which she has confirmed on affirmation to me this morning, has set out the correct calculation, and the shortfall between what she was paid and what she should have been paid is £76.46. That will be the Tribunal's award in relation to the holiday pay claim.

9. The other claim is for notice pay, because the claimant was dismissed without notice. Mr Potter in his letter of 24 May 2017, and, indeed briefly in the response, has sought to argue that the claimant was dismissed without notice because she had committed acts of gross misconduct. He has not however today attended to prove that. When an employer dismisses without notice the burden is upon the employer to justify that dismissal, and to put forward evidence before the Tribunal from which it can conclude that the employee was rightly dismissed without notice. The respondent has not done so. It has put matters in writing, but that is not sufficient in terms of the burden being upon the respondent to prove that the summary dismissal was in fact not unlawful.

10. I therefore find that there was a wrongful dismissal. The claimant is entitled to a week's notice pay. She did not mitigate her loss during that time by any employment, or receipt of any benefits, and consequently she is entitled to an award of notice pay in the sum of £365.50. These will accordingly be the awards of the Tribunal.

Employment Judge Holmes

Dated : 29 December 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON
8 January 2018

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2403858/2017

Name of case: Miss C Forshaw v Potter Trading Limited (In Voluntary Liquidation)

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 8 January 2018

"the calculation day" is: 9 January 2018

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office